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September 24, 1997

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96-98
CC Docket ~~177-90~~
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William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

Re: CCB/CPD 97-30
(Ex Parte Filing)

Dear Mr. Caton:

Network Access Solutions, Inc. ("NAS") writes this letter to urge a prompt Bureau ruling on one issue in this proceeding about which commenters apparently agree. The need for a prompt ruling on this issue arises because of questions raised by the Delaware Public Service Commission.

BACKGROUND

NAS plans to offer end users a telecommunications service that provides a high-speed, dedicated transmission path connecting the end user's premise with a nearby POP of the user's ISP. The service will permit NAS customers to use the Internet at a speed which is many times greater than the approximate 56 kB/second speed which is possible through a regular dial-up telephone connection.

NAS will provide its service by using unbundled voice-grade local loops obtained from incumbent LECs.^{1/} The company will deploy xDSL technology on both ends of each unbundled local loop in order to permit high speed transmissions over these loops. NAS is presently testing its service with one incumbent LEC, and it plans to initiate commercial operations shortly.

NAS can provide its xDSL offering economically because of Sections 251 and 252 of the Act. Those provisions require each large incumbent LEC to enter into a carrier-to-carrier contract setting forth the terms under which the incumbent LEC will provide the other carrier with

^{1/} NAS also will obtain collocation service from incumbent LECs, and it will obtain transport either from incumbent LECs or some other source.

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unbundled network elements and certain other facilities. This contract becomes effective only after the relevant state public utility commission finds, among other things, that prices set forth in the contract are based on cost. Several state public utility commissions already have approved NAS/incumbent LEC contracts.

NAS is not alone in planning a telecommunications service that uses xDSL technology to connect end users with the Internet at high speed. For example, a new market entrant, InterAccess, apparently already provides this service commercially in downtown Chicago; it reportedly provides T1 speed at about half the price (\$170/mo.) of Ameritech's T1 special access service.^{2/} Another new entrant, ioNet, has announced plans to initiate such service commercially in Oklahoma City, Tulsa, Kansas City and Little Rock this fall.^{3/} BellSouth has informed the Commission that it will begin test marketing a similar service in Birmingham, Alabama on September 27.^{4/} U.S. West, Bell Atlantic, and GTE have announced that they too will provide such service.^{5/}

The NAS service meets the definition of "special access" service. Special access service is an offering that provides a customer with a dedicated transmission path which both (i) connects locations specified by the customer within a local exchange area and (ii) is used by the customer to transmit information to another exchange area.^{6/} As indicated above, the NAS service will provide a dedicated, high speed data transmission path connecting the NAS customer's premise with the local POP of the customer's ISP so that the customer can communicate with Internet host computers located in other exchange areas.

^{2/} "ADSL Pioneer Looks to Expand Territory", Interactive Week (Aug. 18, 1997).

^{3/} See ioNet news release, "ioNet Taps U.S. Robotics for First Regional ADSL Data Service" (<http://www/ionet.net/corporate/>).

^{4/} See BellSouth Notification of Trial of ADSL Service Offering (CC Dkt. No. 88-616, June 27, 1997).

^{5/} See "Interprise Offers DSL Services"; http://www.uswest.com/atwork/interprise/xdsl_architecture.html (describing US West's xDSL offering); "Bell Atlantic Takes Its Time with xDSL", Interactive Week (May 26, 1997) (Bell Atlantic plans to initiate commercial xDSL Internet access service in mid-1998); "Carriers Deliver Digital Service", Interactive Week (Aug. 25, 1998) (GTE plans to initiate xDSL Internet access service in Calif., Fla., and Wash. State before the end of 1997).

^{6/} See MTS and WATS Market Structure, Memo. Op. and Order, 54 Rad. Reg. (P&F) 2d 615, 629-30 (1983).

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NAS's offering also is jurisdictionally an interstate service. A special access offering is jurisdictionally interstate if used by customers to originate transmissions that terminate in other states or countries rather than in exchange areas of the same state as the customer.^{7/} NAS's service will be used by NAS customers in one state to originate transmissions which terminate at Internet host computers located in numerous other states and countries.^{8/}

Rather than acknowledge that a service which provides a dedicated transmission path between an end user and an ISP is jurisdictionally an interstate special access service, the Delaware Public Service Commission instead has ruled that it does not know whether the service is jurisdictionally interstate. The Delaware Commission's ruling came in its July 29, 1997 order approving an interconnection agreement between NAS and Bell Atlantic-Delaware in accordance with Sections 251 and 252 of the Act. Since that date, NAS has sought to answer numerous questions posed by the Delaware PSC staff which the staff says are designed to facilitate a future ruling on the jurisdictional issue. No such ruling has been issued. For the FCC's convenience, a copy of the Delaware Commission's July 29 order and all subsequent correspondence between NAS and that commission is attached.

DISCUSSION

NAS expresses no view on the core issue about which ALTS seeks a declaration by the Bureau. That issue is whether the reciprocal compensation requirement of Section 251(b)(5)

^{7/} See, e.g., Nat. Ass'n of Reg. Util. Com'rs v. FCC, 746 F.2d 1492, 1498 (D.C. Cir. 1984) and cases cited therein. See also Gen. Commun. Inc. v. Alascom, 3 FCC Rcd. 700, 708 (1988); Blocking Interstate Traffic in Iowa, 2 FCC Rcd. 2692 (1987); Investigation of Access and Divestiture Related Tariffs, 57 Rad. Reg. (P&F) 2d 188, 218-19 (1984); Interconnections with Private Interstate Communications Systems, 71 FCC 2d 1, 8 (1979).

^{8/} As of January 1997 there were 16 million interconnected Internet host computers worldwide. See K. Werbach, "Digital Tornado: The Internet and Telecommunications Policy" at 21 (Fed. Commun. Comm. Office of Plans and Policy, Mar. 1997). The NAS special access offering is jurisdictionally an interstate service even if some Internet host computers with whom an NAS customer occasionally communicates are located in the same state as the customer. A special access service is an interstate offering if more than 10 percent of all traffic transmitted on the special access service terminates in another state. MTS and WATS Market Structure, Decision and Order, 4 FCC Rcd. 5660 (1989). Far more than 10 percent of all traffic transmitted on NAS's special access service in Delaware will terminate outside of Delaware since Internet host computers are dispersed widely throughout the country (indeed throughout the world).

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requires one LEC to compensate a competing LEC when the latter delivers a call originated by a customer of the former to the local POP of an ISP. Resolving that issue will require the Bureau to explain what the Commission meant in its First Local Competition order when it held that the reciprocal compensation requirement in Section 251(b)(5) applies only to the delivery of "local" calls.

However, NAS urges the Bureau to declare for the two reasons discussed below that a telecommunications service which delivers traffic from the customer to a local ISP POP is jurisdictionally interstate access service regardless of its decision on the reciprocal compensation issue. The Bureau has authority to declare in this proceeding that a service of this type is jurisdictionally interstate since the jurisdictional issue is widely discussed in the comments of interested parties. Moreover, issuing a ruling on the jurisdictional issue need not prejudice the FCC's decision on the reciprocal compensation issue. This is because the reciprocal compensation issue, as explained above, requires the Bureau to explain what the FCC meant when it held earlier that reciprocal compensation is required only for the delivery of "local" traffic. As the comments make clear, ruling on the question of whether such traffic is "local" for purposes of reciprocal compensation does not necessarily dictate a particular outcome on the question of whether such traffic is jurisdictionally interstate.

The first reason that the Bureau should make clear that a telecommunications service providing a dedicated transmission path between an end user and that user's local ISP is interstate special access service is to preserve the FCC's jurisdiction over interstate services. For reasons explained above, it is clear beyond dispute that such a service is jurisdictionally interstate. Interestingly, not a single party commenting directly on the jurisdictional issue argues that such service is jurisdictionally intrastate. By contrast, roughly 25 commenters, including ALTS itself, recognize that it is jurisdictionally interstate.⁹

⁹ See ALTS Reply at 1-2 ("[While] ILECs claim . . . that ALTS is seeking to place local calls to ISPs within the states' exclusive jurisdiction . . . [t]his . . . is completely false"); Reply of Adelphia and 12 other MSOs at 2 ("The [reciprocal compensation] issue . . . relates to local calls that are jurisdictionally interstate" (emphasis in original); Bell Atlantic/NYNEX Reply at 1 ("As the Commission itself has repeatedly recognized, Internet access traffic is . . . predominantly interstate [traffic]"); BellSouth Reply at 2 ("There is no basis in fact or law for the Commission to conclude that . . . calls to ISPs . . . are [jurisdictionally] intrastate"); AT&T Reply at 2 (carriers providing telecommunications service that permit customers to access an ISP are providing an interstate access service); Compuserve Comments at 4 ("under well-established precedent the great preponderance of this information services traffic is jurisdictionally interstate as a matter of law);

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The Bureau also should take prompt action to make the FCC's jurisdiction over this service clear since subjecting the service to regulation as an intrastate offering would harm competition in the nascent market for dedicated high speed Internet access in several ways. First, it will promote tacit price coordination by subjecting the service to tariffing policies applicable to intrastate services. A state's tariffing policy typically requires the service provider, including a nondominant carrier like NAS, to file a tariff governing each intrastate service it provides in that state and to revise that tariff each time the carrier changes any term under which service is offered. The FCC already has found that requiring nondominant carriers to file tariffs harms competition by facilitating tacit price coordination among competitors.^{10/}

Subjecting such services to regulation as intrastate service also will slow the ability of non-dominant carriers to respond to market conditions since the tariffing policies of many states require tariff amendments to be filed several weeks before they become effective. The FCC already has found that requiring a nondominant carrier to file a tariff revision several weeks in advance of implementing the new term of service covered by that revision unnecessarily delays the carrier's ability to respond to market conditions.^{11/}

Subjecting dedicated Internet access service to regulation as an intrastate service also could harm competition by discouraging new entrants from providing this service since it costs a substantial amount of money (1) to prepare and prosecute applications for certificate to provide

Ameritech Reply at 3 ("traffic delivered to ISPs is generally jurisdictionally interstate"); Time Warner Reply at 5 (describing the delivery of traffic to an ISP's local POP as falling "squarely within the FCC's jurisdiction over interstate communications"); GTE Reply 5 ("a communication which (1) originates with an Internet subscriber, (2) transmits the local exchange to an ISP, and (3) is then re-routed to the 'Internet . . . is unquestionably interstate"); Reply of SNET at 2 (Calls to ISPs . . . is not local traffic but is interstate in nature"); BellSouth Reply at 8 (a call to an ISP "is jurisdictionally interstate").

^{10/} Policy and Rules Concerning the Interstate, Interexchange Marketplace, 11 FCC Rcd. 20730, 20744 (1996), stayed pending review on other grounds MCI v. FCC, No. 96-1459 (D.C. Cir., Feb. 13, 1997). While non-dominant carriers also must file an FCC tariff in order to provide interstate special access service under the D.C. Circuit's stay order in MCI v. FCC, that stay presumably will be lifted if the court upholds the FCC's order.

^{11/} Tariff Filing Requirements of Nondominant Common Carriers, 8 FCC Rcd. 6752 6756 (1993), vacated on other grounds Southwestern Bell v. FCC, 43 F.3d 1515 (D.C. Cir. 1995), reinstated 10 FCC Rcd. 13653 (1995).

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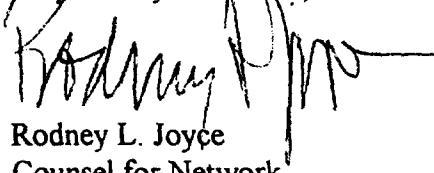
intrastate telecommunications service,^{12/} (2) to prepare and file tariffs and the various periodic reports typically required by public utility commission policies, and (3) to keep abreast of changes in disparate state regulatory policies.

Subjecting dedicated xDSL Internet access service to state regulation also will distort competition in the high speed Internet access market by subjecting to substantially higher regulatory costs those who enter the market using xDSL technology rather than other technologies. At least two technologies besides xDSL are presently used to provide high speed Internet access service - cable modems and satellite; service provided via these other technologies is not regulated as intrastate telecommunications service.

CONCLUSION

In order to preserve its own jurisdiction and eliminate a barrier to the development of competition in the high speed dedicated Internet access market, the Bureau should declare promptly that the provision of service providing high speed dedicated access to local ISP POPs is jurisdictionally an interstate special access service.

Respectfully submitted,



Rodney L. Joyce
Counsel for Network
Access Solutions, Inc.

Enclosures

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^{12/} In order to obtain certification in all 50 states, application filing fees alone total about \$5000, and photocopying costs also are more than \$5000 since many states require the filing of numerous copies of the application along with service on more than 20 different entities.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE JOINT APPLICATION)
OF BELL ATLANTIC-DELAWARE, INC. AND)
NETWORK ACCESS SOLUTIONS, INC. FOR)
APPROVAL OF AN INTERCONNECTION) PSC DOCKET NO. 97-147
AGREEMENT PURSUANT TO SECTION 252(e))
OF THE TELECOMMUNICATIONS ACT OF 1996)
(FILED MAY 2, 1997))

FINDINGS, OPINION, AND ORDER NO. 4560

A. INTRODUCTION

1. Network Access Solutions, Inc. ("NAS") and Bell Atlantic-Delaware, Inc. ("BA-Del") have jointly asked the Commission to approve an interconnection agreement under the provisions of 47 U.S.C. § 252(e), as added by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56. BA-Del is the incumbent local exchange carrier. NAS represents that it will offer what it describes as high speed special access service that will connect each NAS customer, on a dedicated basis, with an on-line Internet or information service provider chosen by the customer. In the terminology adopted by the Telecommunications Act, the agreement presented is one adopted by the carriers' negotiation and the two carriers ask for approval under the review standards applicable to such consensual contracts. See 47 U.S.C. § 252(e)(2)(A). After consideration of the proffered agreement and the comments received,

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the Commission approves the agreement, subject to certain conditions. The Commission does so in furtherance of this State's policies: (1) to foster the development of telecommunications systems employing advanced technology; and (2) to encourage the growth of competitive telecommunications markets. 26 Del. C. § 702(2)-(4).

B. BACKGROUND

2. On May 2, 1997, BA-Del and NAS filed their interconnection agreement with this Commission. The contract, executed on April 11, 1997, has a term extending to at least March, 2000. In its main parts, the agreement sets forth: (1) the terms, conditions, and rates under which BA-Del will provide, and NAS can purchase, unbundled network elements; (2) the terms, conditions, and rates under which NAS can purchase, at discount, BA-Del's retail services; and (3) the terms, conditions, and rates under which Nas can collocate its equipment in BA-Del's facilities. Agreement, ¶¶ 3.0 to 5.0. Many of the terms and rates are set by reference to incorporated tariffs. For other elements and services, the agreement sets forth specific terms and rates. Yet, for unbundled network elements and the wholesale discount, the agreement designates the specified rates and discount as "interim" ones to be

replaced by "permanent" rates and discount as may be approved by this Commission. Agreement at ¶¶ 3.11, 8.1.2, Exh. A n. 1.¹

3. Pursuant to Guideline 30 of the Commission's "Guidelines for Negotiations, Mediation, Arbitration, and Approval of Agreements Between Local Exchange Telecommunications Carriers," notice of the filing of the agreement and the application for its approval was given both by newspaper publication and by actual notice to the participants in Regulation Docket No. 45 and all certificated local exchange carriers.

4. Only Staff filed comments in response to the notice. Initially, Staff raised a concern that, in many instances, the dates designated for BA-Del to begin providing performance reports to allow comparison of the quality of services provided to NAS with that provided to other carriers and BA-Del's own customers were qualified with "TBD," to be determined. See Agreement, Scheds. 15.2A, 15.2C, 15.2D. Second, Staff observed that rates governing the purchase of two categories of local loops, 2 Wire ADSL and 2 & 4 Wire HDSL, were also marked "TBD." Staff requested that the carriers resubmit the agreement replacing the "TBD" notations with

¹Exhibit A to the agreement also lists the rates for "call transport and/or termination" as interim. Agreement, Exh. A n. 1. However, the exhibit does not contain any such designated rates and the body of the agreement does not speak directly to such compensation.

specific dates and rates. Finally, Staff noted that NAS had not applied to be certificated to provide intrastate telecommunications services within Delaware. Staff requested that NAS indicate when it would file for such a Certificate of Public Convenience and Necessity. Thus, Staff recommended that after resubmission of the agreement, the Commission approve the contract subject to the requirement that the carriers submit any future changes or amendments to the Commission for approval.

5. On June 9, 1997, NAS filed a written response addressing Staff's comments. In its response, NAS indicated that the company hoped to begin providing services on a commercial basis shortly after the successful completion of testing of the technology it planned to use. NAS represented that such testing would begin in early Summer, 1997. NAS agreed that the Commission has been granted, by 47 U.S.C. § 252(e), jurisdiction to approve or reject its agreement with BA-Del. However, NAS contended that it need not obtain a certificate from this Commission prior to beginning operations because its intended services would be interstate rather than intrastate in character. As NAS described its contemplated service, a NAS customer will be provided a transmission path between its premises and what NAS describes as a nearby "point of presence" of an Internet or information service provider ("ISP"). From there, the customer will have access to a large number of Internet "host"

computers, most of which will be located in other jurisdictions. Thus, NAS says, its special access service is an interstate service and the company is beyond the reach of this state Commission's regulatory authority.

6. At its meeting on July 29, 1997, the Commission considered whether to approve or reject the Agreement tendered by NAS and BA-Del. After deliberation, the Commission approves the Agreement, subject to conditions. In addition, the Commission reserves and defers consideration of the question of its authority over NAS.

C. FINDINGS AND DISCUSSION

7. By 26 Del. C. § 703(4), this Commission has been granted the authority to implement the provisions of the federal Telecommunications Act of 1996, including the authority to approve interconnection agreements submitted under 47 U.S.C. § 252(e)(1).

8. Pursuant to the provisions of 47 U.S.C. § 252(e)(2)(A), the Commission may reject an agreement adopted by negotiation only if it finds that the agreement discriminates against a non-party telecommunications carrier or that implementation of the agreement would not be consistent with the public interest. Subject to the conditions set forth below, the Commission, in this proceeding, cannot find that the tendered agreement discriminates against

another telecommunications carrier.² Moreover, the Commission determines that approval of the agreement is in the public interest and consistent with the General Assembly's command that this Commission foster both innovation and competition in the telecommunications markets. See 26 Del. C. § 702(2)-(4).

9. As with the other BA-Del interconnection contracts which the Commission has previously reviewed, this agreement contains explicit provisions which call for alteration of the agreement to eradicate inconsistencies with any governing Federal Communications Commission ("FCC") interconnection regulations. The provisions declare such alterations to be "not material" and excuse Commission review unless required by 47 U.S.C. § 252(e). Agreement at ¶ 16.3. In other instances, where material changes may be required by other laws, the agreement contemplates the opportunity for renegotiation of the inconsistent terms. Agreement at ¶ 16.4. So too, as noted above, the agreement, for numerous and various elements and services, sets the pricing terms by reference to external tariffs, all of which can possibly be changed. See Agreement at ¶ 8.1.1, Exh. A. Finally, as again noted above, the carriers have classified

²The Commission looks primarily to the comments by other carriers to highlight discriminatory terms in proffered interconnection agreements. The Commission notes that no carrier has voiced objection to the approval of this agreement.

the rates and charges for certain elements and services as "interim" ones to be in effect until the Commission adopts "permanent rates" consistent with the requirements of the FCC's regulations. Agreement at ¶¶ 3.11, 8.1.2; Exh. A n. 1.

10. Initially, the Commission does not adopt, as its own, the "interim" classification placed on the rates set forth in the agreement for unbundled Network Elements and the wholesale discount applicable to retail services. That "interim" classification and the commitment to have those "interim" rates superseded by later "permanent" rates represent a contractual pledge of the parties, not a Commission directive. Here, the Commission reviews the rates set for unbundled elements and the wholesale discount as it would any other term or condition resolved by negotiation. If the terms agreed upon in the agreement are "interim," it is because the parties are free to construct a contract in such a manner.

11. Second, the Commission believes, and finds, that any later changes, modifications, or amendments to the interconnection agreement, including those triggered under any of the above-described provisions, should, and must, be filed with the Commission and be subject to the opportunity for Commission approval. Because the Commission must maintain a copy of all interconnection agreements for inspection, and because the terms of such agreements must be available to any other carrier, any such changes to this

agreement must be filed with the Commission. Moreover, the Commission finds that the review process set forth by 47 U.S.C. § 252(e)(1) reaches to all changes or modifications, whether such alterations are commanded by the present agreement, arise from later agreements between the carriers, or result from alterations to referenced tariffs.

12. Consequently, to maintain the Commission's oversight and to ensure that its terms are available, the Commission will require NAS and BA-Del to file with the Commission any alterations or revisions made to their agreement. For alterations, amendments, or revisions, brought about by later agreement of the parties or pursuant to the terms of the present agreement, the parties shall file a copy of the altered contract with the Commission. Material changes (as determined by the Commission) shall be subject to Commission approval under the provisions of 47 U.S.C. § 252(e). For modifications wrought by changes in referenced tariffs, NAS and BA-Del shall file notice of the content of such changes with the Commission, citing the tariff so changed and the terms, conditions, and prices which have been altered. Such type of changes may also be subject to Commission approval under 47 U.S.C. § 252(e).

13. In its comments, Staff noted that in many instances the date for BA-Del to begin providing performance reports relating to services provided to NAS, other carriers, or its own customers are

hedged or exclusively marked with a "TBD" notation. In particular, all the onset dates for BA-Del providing performance reports reflecting the quality of service to BA-Del's own ten largest customers are denoted as "TBD." Agreement, Sched. 15.2D . According to the agreement, those "TBD" notations in this schedule reflect that BA-Del has not yet determined that the collection and reporting of this information is feasible, and if it is, when such reporting might be available. Agreement, Sched. 15.2. Staff asks that the carriers resubmit the agreement with definitive dates for each reporting requirement. Under the 1996 Telecommunications Act, BA-Del generally has an obligation to provide nondiscriminatory access to unbundled network elements. 47 U.S.C. § 251(c)(3). Performance reporting requirements are an appropriate method to police whether a carrier is discriminating in favor of other carriers or itself. However, the Act also allows the parties to a negotiated interconnection agreement to determine the terms of their mutual undertakings which need not mirror the obligations otherwise imposed under 47 U.S.C. § 251(b) or (c). 47 U.S.C. § 252(a). Here the carriers have agreed to reporting requirements with hedged commitments. The Commission is not convinced that those disclosed hedges in the performance reporting methodology act to discriminate against a carrier not a party to this agreement or make the implementation of this agreement against the public interest. Thus,

the Commission declines to require resubmission with specific dates as requested by Staff.

14. Staff has also suggested that the carriers resubmit the agreement with specific rates for two categories of local loops, 2 Wire ADSL and 2 & 4 Wire HDSL, which are presently priced as "TBD." Under 47 U.S.C. § 252(a)(1), a negotiated agreement must include a detailed schedule of itemized charges for interconnection and for each service or network element included in the agreement. However, this agreement expressly contemplates that these particular categories of loops will not be immediately available and will be provided, upon request, after a period for technical and operational testing. Agreement at ¶ 3.2.10. In such context, the Commission, again, is not convinced that carriers must be required to now set definitive prices to govern the potential purchase of such loops at some time in the future. However, the Commission expects that the carriers will return and file such definitive rates for such loops when a request for such loops has been made.

15. In its approval of other interconnection agreements, the Commission had made its approval contingent on the non-incumbent carrier obtaining a Certificate of Public Convenience and Necessity authorizing it to provide local exchange or other intrastate telecommunications services within this State. Here, in response to Staff's comments, NAS has asserted that as a provider of interstate

services it is not within the regulatory authority of the Commission and need not obtain such a certificate. The Commission is not prepared, at this point, to make a determination on that question. The resolution of that issue might turn on: (1) more facts about the location of the interconnection with ISPs; (2) the classification, for regulatory services, of information and Internet service; and (3) a comparison of NAS's contemplated special access for routing transmissions to ISP providers with the special access services provided by local exchange carriers and competitive access providers for routing telecommunications to interexchange carriers. The Commission directs Staff, NAS, and any other interested party, to further explore this issue of the Commission's authority and to submit a report within a reasonable period. That Commission anticipates that such report shall be submitted prior to the time that NAS is ready to provide commercial services. At the same time, the Commission will not reject this agreement based on that question. The Commission does, however, reserve the power to impose further conditions on its approval depending on its conclusion about its regulatory reach.

16. In summary, for the above reasons, the Commission approves, subject to the condition expressed below, the interconnection agreement between BA-Del and NAS. The condition is that the parties file for review and approval any changes,

modifications, or amendments made to this agreement hereafter. At the same time, the Commission reserves the power to determine whether NAS need obtain a Certificate prior to providing service under this agreement.

17. The Commission emphasizes that its approval of this agreement shall not be construed as any Commission finding or endorsement that any of the terms, conditions, and prices in the agreement will allow BA-Del to apply for authority to offer interLATA services under 47 U.S.C. § 271. Because the negotiated portions are not subject to review under any substantive standard, the Commission's approval of those portions cannot be deemed an assessment of "checklist" compliance. So too, the Commission makes no finding whether NAS is, or will be a provider, meeting the criteria set forth in 47 U.S.C. § 271(c)(1)(A).

D. ORDERING PARAGRAPHS

Now, therefore, this 29th day of July, 1997, IT IS ORDERED:

1. That, subject to the conditions set forth in this Order, the interconnection agreement presented by Bell Atlantic-Delaware, Inc., and Network Access Solutions, Inc., on May 2, 1997, is approved under the provisions of 47 U.S.C. § 252(e)(2)(A).

2. That the agreement shall be available for inspection and copying under the provisions of 47 U.S.C. § 252(h).

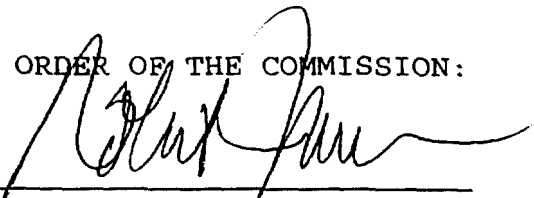
3. That, pursuant to the provisions of 47 U.S.C. § 252(i), Bell Atlantic-Delaware, Inc., shall make available any interconnection, service, or network element provided under the above agreement to any other requesting telecommunications carrier upon the same terms and conditions as provided in the agreement.

4. That Network Access Solutions, Inc., and Bell Atlantic-Delaware, Inc., shall promptly notify the Commission of the nature and terms of any changes to be made to the agreement either by further agreement of the parties, by operation of the terms of the present agreement, or by changes in any referenced tariffs.

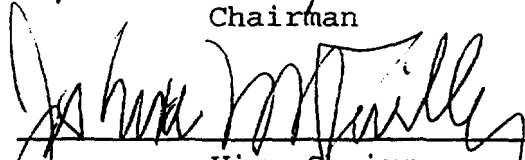
5. That the Commission Staff, Network Access Solutions, Inc., and other interested person, shall, within forty-five (45) days from the date of this Order, file a report with a conclusion on the issue of whether Network Access Solutions, Inc., can, and should, be subject to the regulatory authority of this Commission. If the Staff, Network Access Solutions, Inc., and any other interested person cannot resolve such question, they shall file, by the same time, a memorandum setting forth each person's or entity's position on such question. The Commission reserves the power to make further conditions or modifications to the approval granted in paragraph 1 above based on its conclusion to that certification question.

6. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

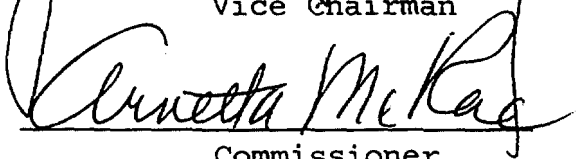
BY ORDER OF THE COMMISSION:



Chairman



Vice Chairman



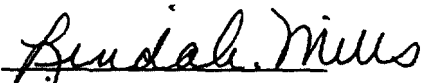
Commissioner



Commissioner

Commissioner

ATTEST:


Secretary



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THE PUBLIC SERVICE COMMISSION
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August 18, 1997

Mr. Rodney L. Joyce, Esq.
Ginsburg, Feldman and Bress
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

RE: In the Matter of the Joint Application of Bell Atlantic-Delaware, Inc. and Network Access Solutions, Inc. for Approval of An Interconnection Agreement Pursuant to Section 252(e) of the Telecommunications Act of 1996. (Filed May 2, 1997)
P.S.C. Docket No. 97-147

Dear Mr. Joyce:

In PSC Order No. 4560 dated July 29, 1997, the Commission Staff and interested parties within 45 days of this Order, must file a report with the Commission to resolve the question of whether Network Access Solutions, Inc. ("NAS") needs to apply for a Certificate of Public Convenience and Necessity to provide competitive intrastate or local exchange services within the State of Delaware.

The Commission Staff is attempting to understand what types of services that NAS is going to provide to customers and what types of customers NAS will be serving. In order to get a better understanding, please answer the following questions:

1. Special Access Service is tariffed by Bell Atlantic-Delaware, Inc. as a basic local exchange service. This service is communications channels which connect customer premises, serving wire centers or combinations thereof within the State of Delaware. Channels may be provided in the same wire center or in different wire centers within DE on a two-point or multi point basis. Connections will be made directly through a serving wire center or through a Telephone Company hub. Will NAS be providing or reselling this service on an intrastate basis?

Mr. Rodney L. Joyce, Esq.

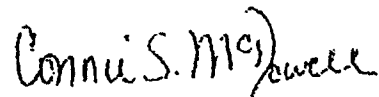
August 20, 1997

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2. Will a Delaware NAS customer dial a local telephone number or an intrastate toll number to access an Internet Service Provider or host computer?
3. Will Delaware NAS customers only be completing interstate calls?
4. Will any Delaware NAS customer directly access another Delaware customer through any of its services? (Directly access means either a local call or an intrastate toll call.)

Please respond to these questions as quickly as possible. If you have any questions in answering these questions, please contact me directly at 302-739-3230 or by fax at 302-739-4849.

Sincerely,



Connie S. McDowell
Chief of Technical Services

cc: Service List

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August 22, 1997

VIA FACSIMILE (Fax no. 302-739-4849)

Connie S. McDowell
Chief of Technical Services
The Public Service Commission
1560 South Dupont Highway
Dover, Delaware 19901

Re: P.S.C. Docket No. 97-147

Dear Ms. McDowell:

This responds to your letter dated August 18, 1997, in which you asked me to answer certain questions about the telecommunications service that Network Access Solutions, Inc. ("NAS") plans to provide customers in Delaware.

You first asked whether NAS intends to resell Bell Atlantic-Delaware's intrastate special access service. NAS does not intend to resell Bell Atlantic's intrastate special access service.

You next asked whether NAS intends to provide its Delaware customers with a service that is a substitute for Bell Atlantic-Delaware's intrastate special access service. NAS does not intend to provide its Delaware customers with a service that is a substitute for Bell Atlantic's intrastate special access service. Instead, the NAS service might be thought of as a substitute for certain Bell Atlantic interstate special access offerings. As you know, Bell Atlantic offers both intrastate special access service and interstate special access service to customers in Delaware. Bell Atlantic provides both types of service with transmission facilities located entirely in Delaware.¹ Service offered over these in-state facilities is an intrastate special access offering if the service is used by the Delaware customer as the first leg of a voice call or data transmission that terminates in Delaware. By contrast, service offered over these facilities is an interstate special access offering if the service is used by the Delaware customer as the first leg of a voice call or data transmission that terminates outside of Delaware. Thus, if Bell Atlantic provides a Wilmington business customer with a T1 special access service which connects the customer to an AT&T Class 4 toll switching office in Wilmington so that the customer can bypass Bell Atlantic's switching facilities when making toll

¹ Bell Atlantic provides interstate special access service under terms that are set forth in Section 7 of the company's Tariff F.C.C. No. 1.

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calls to telephones outside of Delaware, the service is interstate special access since the service is used as the first leg of voice calls that terminate outside of Delaware. NAS's proposed service is an interstate special access offering because it will connect the customer by high speed line to a nearby point of presence (often in Delaware) of the customer's Internet Service Provider ("ISP") so that the customer can originate data transmissions which terminate at Internet host computers outside of Delaware (e.g., so that the customer can retrieve an Internet Web "home page" stored on an Internet host computer located outside of Delaware or download a computer program stored on an Internet host computer located outside of Delaware). The NAS service will be attractive to those who want the ability to use the Internet without the long waiting periods that exist when the Internet is accessed by making a regular dial-up telephone call.

You next asked whether an NAS customer in Delaware will need to dial a Delaware telephone number to access that customer's Internet Service Provider ("ISP"). An NAS customer will not dial any telephone number to access its ISP. Instead, the NAS service will provide a direct, non-dial-up connection to that customer's ISP. If the ISP has a point of presence in Delaware, the NAS special access service presumably will connect the NAS Delaware customer to the ISP's Delaware point of presence. But while both ends of the NAS special access service would be located in Delaware, the NAS special access offering is an interstate service as explained above since the NAS customer will use the service as the first leg of data transmissions to Internet host computers located outside of Delaware.

You next asked whether NAS's Delaware customers ever will use the NAS service as the first leg of a transmission to an Internet host computer located in Delaware. While the overwhelming majority of transmissions by NAS's Delaware customers will terminate at Internet host computers located outside of Delaware, some NAS customers occasionally may use the service to communicate with an Internet host computer located in Delaware since some of the 16 million Internet host computers probably are located in Delaware. But NAS is not providing an intrastate special access service when its customers use the service to communicate with an Internet host computer located in Delaware. As NAS explained in June 9 comments filed with the Commission in this docket, the FCC long ago adopted a Federal/state joint board recommendation to classify a special access service as interstate service as long as the service is used as the first leg more than 10 percent of the time for transmissions which terminate in a state other than the one where the special access customer is located.² It is plain that far more than 10 percent of transmissions by NAS customers will terminate on Internet host computers located outside of Delaware since it is likely that substan-

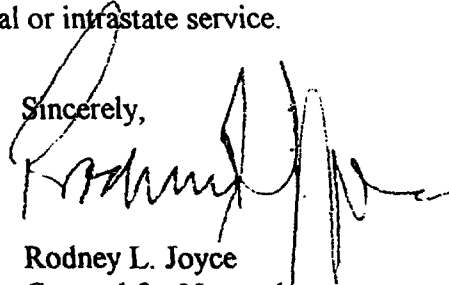
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tially more than 99 percent of the 16 million Internet host computers are located outside of Delaware.

Finally, you asked whether an NAS customer in Delaware will use NAS service to make either a local or long distance telephone call to another NAS customer in Delaware. NAS will not market its service as a way to make telephone calls, and it would be uneconomic to subscribe to NAS service in order to make telephone calls. Instead, NAS will provide its service as a way to access and use the Internet at high speed in order to avoid the long waiting periods that an Internet user encounters in using the Internet when he or she accesses the Internet by making a dial-up telephone call.

While NAS does not need a certificate from the Commission to provide the service it proposes since that service is an interstate service, the company recognizes that it must obtain a certificate before providing local or intrastate telecommunications service, including intrastate special access, in Delaware. NAS has no plan to provide local or intrastate telecommunications service in Delaware either by using the interconnection agreement it has negotiated with Bell Atlantic or otherwise. But the company commits that, if its plan changes, it will obtain a certificate from the Commission before providing any local or intrastate service.

Sincerely,



Rodney L. Joyce
Counsel for Network
Access Solutions, Inc.

cc: Bonnie Wolfgang (Bell Atlantic)
(Fax No. 302 571-5560)
Gary A. Myers (Dep. Att. Gen.)
(Fax no. 302-739-4849)
Bruce H. Burcat (PSC Exec. Dir.)
(Fax no. 302 739-4849)